

**FILED**

AO 106 (Rev. 7/87) Affidavit for Search Warrant

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

## United States District Court JUN 09 2009

District of  
New Mexico

MATTHEW J. DYKMAN

In the Matter of the Search of  
(Name, address or brief description of person, property or premises to be searched)CLERK  
APPLICATION AND AFFIDAVIT  
FOR SEARCH WARRANTEvent data recorder, air bag module of a 2004 Silver Dodge Durango  
with New Mexico plate GGX102, VIN# 1D4HB38N44F134322CASE NUMBER: 09.MR.203  
09.MG.047I, Denise Begaye being duly sworn depose and say:I am a(n) Criminal Investigator and have reason to believethat on the person of xx on the property or premises known as (name, description and/or location)

A 2004 silver Dodge Durango with New Mexico plate GGX102, VIN# 1D4HB38N44F134322, the air bag module which is located under the dash board instrument paneling on the driver side, left of the steering column; a full vehicle mechanical inspection to determine the said vehicle's condition at the time of collision.

in the McKinley County District of New Mexico

there is now concealed a certain person or property, namely (describe the person or property to be seized)

Any evidence to include, but not limited to an Air Bag Module, sensors, Engine Control Module (DCM) or Vehicle Control Module (CM) and any property with a full body inspection which is evidence of a crime or property designed for use, intended for use or which is or has been used as a means of committing a criminal offense from the silver Dodge Durango with New Mexico plate GGX102, VIN# 1D4HB38N44F134322.

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

concerning a violation of Title 18 United States code, Section(s) 1153, 1111

The facts to support a finding of Probable Cause are as follows:

See attach statement of probable cause.

Continued on the attached sheet and made a part hereof.

X Yes No

Signature of Affiant

Sworn to before me, and subscribed in my presence

Date

at

City and State

Name and Title of Judicial Officer

Signature of Judicial Officer

09.MR.203  
09.MG.047

Probable Cause

I, DENISE BEGAYE, being duly sworn, depose and states as follows:

1). I am a Criminal Investigator (CI) for the Navajo Department of Criminal Investigation (NDCI), currently assigned to the Crownpoint Police District, Crownpoint, New Mexico. I have served in the capacity of a Police Officer and a Criminal Investigator of the NDCI for twelve (12) years and three (3) months, and currently have primary investigative responsibilities pertaining to crimes on Indian Reservation. The information set forth in this probable cause statement has been derived from my own investigation, communicated to me by other sworn law enforcement officers and other reliable sources.

2). On Tuesday, March 24, 2009, your affiant was notified of two vehicles that were involved in a collision resulting in the death of LESTER BENNETT, a Navajo Indian male, who was the driver of a white Ford Ranger with New Mexico plate 994JHY, approximately at the mile marker twelve (12) on Navajo Route 11-49 in Mariano Lake, New Mexico, located within Indian Country.

3). Navajo Police officers were dispatched to the scene where KALE R. YAZZIE, driver of a 2004 Silver Dodge Durango with New Mexico plate GGX102, was detained by a passing motorist and then later transported by ground ambulance to the Gallup Indian Medical Center (GIMC), Gallup, New Mexico for treatment. It was reported by Emergency Medical Technicians

(EMT'S) that KALE R. YAZZIE had tried to escape from the emergency room but was found and returned to the emergency room for treatment.

4). Reports from witness LITTLE JOHN PATON JR. stated that KALE R. YAZZIE was driving east bound on Navajo Route 11-49, erratically and in a reckless manner causing oncoming vehicles to pull off the road to avoid being hit. LITTLE JOHN said he stayed approximately 75 yards behind and paced the Silver Dodge Durango from the intersection of State Road 566 and Navajo Route 11-49 until the mile marker 12 on Navajo Route 11-49, where the collision occurred.

5). KALE R. YAZZIE had picked up a hitchhiker that was standing along the road and LITTLE JOHN had passed the Dodge Durango. LITTLE JOHN stated he looked in the side mirror and saw the Dodge Durango coming up on him fast and had missed hitting LITTLE JOHN's truck as KALE R. YAZZIE had driven back onto the east bound lane.

6). LITTLE JOHN said they drove up on a small white Ford truck that was traveling east bound near the mile marker 6.5 on Route 11-49. LITTLE JOHN noticed the Dodge Durango would drive beside and swerve toward the Ford truck and then the Dodge Durango would slow down and drive closely behind the Ford truck. No contact was made with either vehicles but the Dodge Durango continued to drive in the middle of the road and KALE R. YAZZIE would steer closely to the driver side of the Ford truck and would alternately go behind the Ford truck and then back on the driver side and swerve toward the Ford truck.

7). It continued for several miles and the Ford truck stopped partially on the road and the Dodge Durango stopped and parked next to the Ford truck in the middle of the road, during that time the hitchhiker had jumped out of the Dodge Durango. The Ford truck then started to drive again and the Dodge Durango quickly caught up with the Ford truck and continued to drive beside and behind the Ford truck. The Dodge Durango would swerve toward the Ford truck and tried to get the Ford truck off the road.

8). As both vehicles were coming up on the mile marker 12, the Dodge Durango had side swiped the driver side of the Ford truck while still on the road, and caused it to veer off the road abruptly. The Ford truck continued to travel onto the shoulder which consists of grass, gravel and dirt mixture. LITTLE JOHN stated, "It looked like he meant to do it".

9). Both vehicles came to the final resting position on the south side of the roadway but within the right of way. The Dodge Durango landed in an up right position with minimal contact and induced damages. The final resting position of the Ford truck was on its cab. The Ford truck sustained a considerable amount of contact and induced damages.

10). As a result of the collision the occupant of the Ford truck was pinned inside still wearing his seatbelt and subsequently died of injuries to his head. An autopsy was performed at the Office of Medical Investigator's in Albuquerque, New Mexico. The pathologic diagnoses were traumatic and positional asphyxia with blunt force head and neck injuries and contusions and multiple abrasions of the upper and lower extremities and the manner of death is homicide.

11). Officer JIMMY YAZZIE informed your affiant that he smelled a strong odor of intoxicating liquor present on KALE R. YAZZIE when he was picked up at the GIMC. Thereafter, KALE R. YAZZIE was taken to the New Mexico State Police office and administered the Intoxilyzer 8000 with a breath alcohol concentration of .16.

12). The involved vehicles are described as a 2004 Silver Dodge Durango with New Mexico plate GGX102 (VIN# 1D4HB38N44F134322) and a 1997 white Ford Ranger single cab with New Mexico plate 994JHY (VIN# 1FTCR10A6VPA19605) which are both presently located at the Thoreau wrecking yard in Continental Divide, New Mexico.

13). Based on the training of affiant and the experience of the assisting New Mexico State Police Officers, it is known that vehicle dynamics such as the speed of a vehicle may be determined from the air bag module of a vehicle, *SENSORS, ENGINE CONTROL MODULE (ECM) OR VEHICLE CONTROL MODULE (VCM) AND ANY PROPERTY WITH A FULL BODY INSPECTION IS EVIDENCE OF A CRIME OR PROPERLY DESIGNED FOR USE.* DB

14). Affiant is aware that an air bag module can be removed from a vehicle and down loaded to determine the vehicle dynamics, *SENSORS, ENGINE CONTROL MODULE (ECM) OR VEHICLE CONTROL MODULE AND ANY PROPERTY WITH A FULL BODY INSPECTION WHICH IS EVIDENCE OF A CRIME OR PROPERTY DESIGNED FOR USE, INTENDED FOR USE OR WHICH IS OR HAS BEEN USED AS A MEANS OF COMMITTING A CRIME OFFENSE FROM THE SILVER DODGE DURANGO WITH NEW MEXICO PLATE GGX102* DB

15). Based upon the foregoing, your affiant submits there is probable cause to believe Kale Yazzie committed the crimes of second degree murder in violation of Title 18 United States code, Sections 1153 & 1111 and prays this Court for issuance of a search warrant involving a silver Dodge Durango with New Mexico plate GGX102, VIN# 1D4HB38N44F134322 and a 1997 white Ford Ranger single cab with New Mexico plate 994JHY, VIN# 1FTCR10A6VPA19605, located at Thoreau Wrecking yard in

Continental Divide, New Mexico, to search, seize and to examine the following of or inside said vehicles.

- A) The air bag module which is located under the dash board instrument paneling on the driver side, left of the steering column.
- B) A full vehicle mechanical inspection to determine the said vehicle's condition at the time of collision.

*SENSORS, ENGINE CONTROL MODULE (ECM) OR VEHICLE CONTROL MODULE AND ANY PROPERTY WITH A FULL BODY INSPECTION IS EVIDENCE OF A CRIME OR PROPERTY DESIGNED FOR USE AS A MEANS OF COMMITTING A CRIME OFFENSE FROM THE SILVER DODGE DURANGO WITH NEW MEXICO PLATE 66X102.* DB

Respectfully submitted,

*Denise Begaye*

DENISE BEGAYE  
Criminal Investigation  
Navajo Department of Criminal  
Investigation  
Crownpoint, New Mexico

Subscribed and sworn  
to before me this 9 day  
of June 2009.

*Robert D. ...*  
UNITED STATES MAGISTRATE JUDGE